IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2006 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NAGINDAS DAHYALAL MEHTA

Versus

JUNAGADH MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 2006 of 2004

MS SEJAL K MANDAVIA for Petitioner No. 1

MR PREMAL R JOSHI for Respondent No. 1

MS FALGUNI PATEL, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 28/07/2004

ORAL JUDGEMENT

Rule. Mr.Premal Joshi waives service of notice of rule on behalf of respondent No.1. Ms.Patel, learned

AGP waives service of notice of rule on behalf of respondent No.2. Heard the learned advocates for the parties, who jointly request that the petition may be taken up for final disposal today.

2. It is the case of the petitioner that the petitioner was placed under suspension for a period between 15.5.90 to 2.11.92 and thereafter once again from 5.2.93 to 31.8.98 on account of criminal complaint filed against the petitioner involving offences under section 406, 428, 468, 409, 471, 477, 120-B, 408, 503, 109 and 465 of the Indian Penal Code. It is also the case of the petitioner that eventually, the said complaint came to be withdrawn on 14.5.2001. In the meantime, the petitioner was allowed to retire on reaching the age of superannuation with effect from 31st August 1998. The petitioner has stated that earlier, the petitioner had filed Special Civil Application No.4410 of 2003 claiming the unpaid retiral benefits such as pension, provident fund, gratuity, leave encashment, etc. It is not in dispute that the said Special Civil Application came to be disposed of by the order dated 7.4.2003 wherein it was directed that the gratuity amount of Rs.1,57,108/- be paid over to the petitioner promptly. It was further directed that the Chief Officer of the Junagadh Nagarpalika to consider the demand of the petitioner with respect to retirement benefits and pass appropriate orders within two months from the date of receiving the copy of the order. The present petition is filed with a grievance that despite the said order dated 7.4.2003 passed by this Court and despite repeated representations by the petitioner, the respondent No.1 has not paid any amount whatsoever to the petitioner. In fact, in para 3.2 of the petition, following averments are made :

> "3.2 The petitioner has made number of representations during his service time. Some of the representations are annexed hereto and marked as Annexure 'D' collectively to this petition. Ultimately the petitioner issued legal notice dtd. 22/11/2001 and demanded all the benefits i.e. gratuity and other retirement benefits. The said notice is served to the respondent, even though no action are taken by the respondent and therefore there is no other way but to approach this Hon'ble Court by way of present petition. Copy of the said legal notice as well as its acknowledgment receipt are annexed hereto and marked as Annexure E to this petition."

3. From the above narration, it can be seen that the

petitioner has come before this Court in the present petition with a case that despite the order and despite repeated representations made by the petitioner, the respondent No.1 has not paid any amount whatsoever to the petitioner. In response to the notice issued by this Court, the respondent No.1 has filed an affidavit wherein it is stated, inter alia, that the petitioner was paid provident fund amount of Rs.3,16,919/- on 3.3.99. It is the case of the respondent No.1 that the respondent No.1 does not have a pension scheme, but the employees are entitled to provident fund and the entire amount of provident fund due to the petitioner has been paid as far back in March 1999. In the affidavit in reply, respondent No.1 has also stated that the petitioner is already paid an amount of Rs.2,28,307/- towards gratuity with interest on 18.6.2003. The affidavit further states that the petitioner is also paid an amount of Rs.21,973/- towards leave encashment on 17.6.2004.

4. From the recording of the contents of the affidavit in reply, it becomes clear that the petitioner has knowingly and deliberately filed a false affidavit in the petition and grossly misled this Court on material aspects of the matter. Though the petitioner has filed a rejoinder to the above affidavit in reply, the said aspects of the affidavit in reply have not been denied in the rejoinder. This, therefore, means that the petitioner had actually received the provident fund amount of more than Rs.3 lacs as far as back in March 1999 and had also received the gratuity due to the petitioner along with interest on 18.6.2003. Even then, the petitioner has stated in the petition that despite the order of this Court and despite representations, no amount has been paid to the petitioner by the respondent No.1. This is a deliberate and gross misstatement made by the petitioner and this Court would have been justified in rejecting the petition on this short ground of misleading the Court on material aspects of the matter.

5. Considering the fact that the petitioner has retired since long, I refrain from taking this course of action and would proceed to decide the other issues involved in the matter. For the period of suspension between 15.5.90 to 2.11.92, the petitioner has produced order dated 21.11.92 passed by the Chief Officer of the respondent No.1 Nagarpalika wherein it is stated that salary of the said suspension period is to be paid to the petitioner. In view of this order, the petitioner is entitled to full salary for the period between 15.5.90 to 2.11.92. Regarding the remaining period of suspension,

i.e. 5.2.93 to 31.8.98, no such direction can be given by this Court at this stage and the said period has to be regulated by the respondent No.1 after hearing the petitioner and on the basis of service rules applicable to the petitioner.

6. In the result, the prayer regarding payment of pension/provident fund, leave encashment and other retirement benefits is concerned, the same no longer survives in view of the fact that the petitioner has already received all these amounts. With respect to the period of suspension between 15.5.90 to 2.11.92, in view of the above discussion, the respondent No.1 is directed to pay full salary to the petitioner for the aforesaid period and will pay the difference between the subsistence allowance already paid to the petitioner and the full salary which the petitioner would have been otherwise entitled to. With respect to the suspension period from 5.2.93 to 31.8.98, the respondent No.1 shall after giving a reasonable opportunity to the petitioner of being heard pass appropriate order in accordance with law as to how the said period is to be regulated and would act accordingly for the purpose of payment of dues, if any, on the basis of such an order. The said exercise will be completed within a period of two months from today.

7. In view of the above directions, the petition stands disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)